

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

ELEANOR THAYER,

Plaintiff,

v.

Civil Action No. 1:22CV28
Washington County Circuit Court Case No.
CL22-824

ROSE'S STORES, INC.
a/k/a VARIETY WHOLESALERS, INC.,
a/k/a VARIETY STORES, INC.

Defendant.

NOTICE OF REMOVAL

Defendant Roses Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc., ("Roses Stores"), by counsel, pursuant to 28 U.S.C. 1441 and 1446, hereby files this *Notice of Removal* on the following grounds:

1. Plaintiff filed suit in Circuit Court for the County of Washington on May 27, 2022, seeking \$200,000.00 in compensatory damages against Roses Stores. A copy of the Summons and Complaint are attached as Exhibit A. Roses Stores was served with the Complaint on July 12, 2022.
2. Roses Stores timely filed an Answer in the Martinsville Circuit Court on July 20, 2022. A copy of the Answer is attached as Exhibit B.
3. There have been no further proceedings in this action.
4. Upon information and belief, Plaintiff is a citizen of Virginia.
5. Roses Stores is a North Carolina corporation with its principal place of business at 218 S. Garnett St., Henderson, North Carolina 27536-4644.
6. The action involves a controversy between citizens of different states. There is complete diversity of citizenship.

7. The amount in controversy exceeds the jurisdictional limits of \$75,000.

8. This Court has original jurisdiction in this matter pursuant to 28 U.S.C. § 1332(a), and the action may therefore be removed to this Court pursuant to 28 U.S.C. § 1441(a). Roses Stores desires to remove this action to this Court.

9. Pursuant to 28 U.S.C. § 1446 (b)(2)(B), this Notice of Removal is being filed within thirty (30) days after the date Roses Stores was served with the Complaint.

10. Pursuant to 28 U.S.C. § 1441(a), venue of this removal action is proper in the Western District of Virginia, Abingdon Division, because it is in the district and division embracing the place where the state court action is pending.

11. Promptly after the filing of this Notice of Removal, Roses Stores will give written notice of the removal to Plaintiff, the adverse party, and will file a copy of this Notice of Removal with the Circuit Court for Washington County, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Roses Stores respectfully requests that this action be removed from the Washington County Circuit Court to this Court.

By: _____

Counsel

Lawrence A. "Lex" Dunn (VSB #30324)
Sarah K. Knarzer (VSB #97063)
McCandlish Holton, P.C.
P.O. Box 796
1111 East Main Street, Suite 2100
Richmond, VA 23219
(804) 344- 6307 Telephone
(804) 819-1175 Facsimile
LDunn@lawmh.com
sknarzer@lawmh.com
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of August 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. A true and accurate copy of the foregoing will be sent via U.S. mail to the following:

David L. Scyphers, Esq.
SCYPHERS & AUSTIN, P.C.
Attorneys at Law
189 Valley Street, N E
Abingdon, VA 24210
Telephone: (276) 628-7167
Facsimile: (276) 628-8736
Counsel for Plaintiff

And via U.S. Mail to:

Hon. Tricia S. Moore
Washington County Circuit Court
Courthouse
189 East Main Street
Abingdon, VA 24210-2838



Lawrence A. "Lex" Dunn (VSB #30324)
Sarah K. Knarzer (VSB #97063)
McCandlish Holton, P.C.
P.O. Box 796
1111 East Main Street, Suite 2100
Richmond, VA 23219
(804) 344- 6307 Telephone
(804) 819-1175 Facsimile
LDunn@lawmh.com
sknarzer@lawmh.com
Counsel for Defendant

EXHIBIT A

COMMONWEALTH OF VIRGINIA



WASHINGTON CIRCUIT COURT

Civil Division

189 EAST MAIN STREET

ABINGDON VA 24210

: (276) 676-6224

Summons

To: CORPORATION SERVICE COM (RA)
100 SHOCKOE SLIP FL 2
RICHMOND VA 23219

Case No. 191CL22000824-00

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Friday, July 01, 2022

Clerk of Court: PATRICIA S. MOORE

by

A handwritten signature in black ink, appearing to be "Patricia S. Moore", written over a horizontal line.

(CLERK/DEPUTY CLERK)

Instructions:

COMPLAINT

Hearing Official:

Attorney's name:

SCYPHERS, DAVID L
189 VALLEY ST
ABINGDON VA 24210

VIRGINIA

IN THE CIRCUIT COURT OF WASHINGTON COUNTY

ELEANOR THAYER,

Plaintiff

v.

No. 22-824

ROSE'S STORES, INC.
a/k/a VARIETY WHOLESALERS, INC.
a/k/a VARIETY STORES, INC.

Registered Agent: Corporation Service Company
100 Shockoe Slip Fl 2
Richmond, VA 23219

COMPLAINT

Comes now Eleanor Thayer, plaintiff, by counsel, and moves for judgment against Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc., a corporation authorized to do business in Virginia, as follows:

1. To the best of the knowledge of the plaintiff's counsel, the defendant(s), Variety Stores, Inc. and/or Variety Wholesalers, Inc., is or are corporation(s) that operate(s) many stores in the Southeastern United States and in particular, a business known as Rose's at 751 E. Main Street, Abingdon, Washington County, Virginia. The defendant(s) are hereinafter jointly referred to herein as "Rose's".

2. Rose's is a retail discount store open to the public, and its owner(s) and by extension, its agents and/or staff have a duty to use reasonable care to maintain its premises in a reasonably safe condition for its customers.

3. Notwithstanding such duties, the plaintiff on June 29, 2020, was in the Men's

Department of Rose's in Abingdon, Washington County, Virginia, selecting shirts when she was hit and knocked to the ground by a cart piled high with boxes, pushed by an assistant manager of Rose's, "Peyton", a male.

4. The defendant's agent or employee who operated the cart had a duty to keep a proper lookout and keep an unobstructed view as he was pushing the cart. He further had a duty to push the cart at a reasonable speed and manner so that he would be able to avoid any customers or obstructions in his path.

5. The defendant(s), including but not limited to the management of Rose's, had a duty to properly staff their stores and adequately educate their employees concerning the safety of customers visiting the store(s).

6. As a proximate result of the defendants' carelessness and negligence as aforesaid, the plaintiff suffered a fall at that time and place and sustained serious and permanent injuries.

7. As a proximate result of said injuries, plaintiff has suffered and will continue to suffer great pain and mental anguish; has incurred and will incur medical expenses in an effort to be cured of said injuries; and has been limited in the performance of her affairs.

WHEREFORE, the plaintiff, Eleanor Thayer, demands judgment against the defendants, Variety Wholesalers, Inc. a/k/a Variety Stores, Inc., a/k/a Rose's Store's Inc., in the amount of TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS, with interest from the 29th day of June, 2020, and for her costs herein expended.

ELEANOR THAYER

By Counsel

SCYPHERS & AUSTIN, P. C.

Attorneys at Law

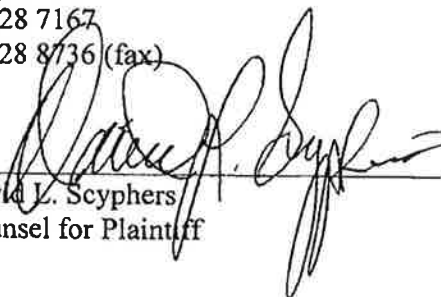
189 Valley Street, N E

Abingdon, VA 24210

276 628 7167

276 628 8736 (fax)

By


David L. Scyphers
Counsel for Plaintiff

*Scyphers
& Austin, P.C.*
ATTORNEYS AT LAW
189 VALLEY STREET
ABINGDON, VA 24210

(276) 628-7167

EXHIBIT B

VIRGINIA :

IN THE CIRCUIT COURT OF WASHINGTON COUNTY

ELEANOR THAYER,

Plaintiff,

v.

Case No. CL22-824

ROSE'S STORES, INC.

a/k/a VARIETY WHOLESALERS, INC.,

a/k/a VARIETY STORES, INC.

Defendant.

ANSWER

Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc., by counsel, states the following response to the Complaint filed herein:

1. Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc. admits that on June 29, 2020 the retail store located at 751 E. Main Street, Abingdon, Washington County, Virginia was operated by Variety Stores, Inc. Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc. denies the remaining allegations in paragraph 1 of the Complaint.

2. The retail store located at 751 E. Main Street, Abingdon, Washington County, Virginia was open to the law-abiding public within regular business hours. The remaining allegations in paragraph 2 of the Complaint state legal conclusions to which no response is required and, therefore, they are denied.

3. Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc. admits that there was an incident with the plaintiff on June 29, 2020 in the retail store located at 751 E. Main Street, Abingdon, Washington County, Virginia, but denies the remaining

allegations in paragraph 3 of the Complaint because the description of the incident is not accurate.

4. The allegations in paragraph 4 of the Complaint state legal conclusions to which no response is required and, therefore, they are denied.

5. The allegations in paragraph 5 of the Complaint state legal conclusions to which no response is required and, therefore, they are denied.

6. Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc. denies the allegations in paragraph 6 of the Complaint.

7. Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc. denies the allegations in paragraph 7 of the Complaint.

8. The plaintiff has sued the wrong entity.

9. Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc. denies any and all allegations which have not been expressly addressed herein.

10. Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc. shall rely on the affirmative defenses of assumption of the risk, contributory negligence and/or the failure to mitigate damages as these defenses are supported by the evidence known or uncovered during discovery or trial of this matter.

11. Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc. objects to any requests for admission served herein because this matter was recently filed and served.

WHEREFORE, Rose's Stores, Inc., a/k/a Variety Wholesalers, Inc., a/k/a Variety Stores, Inc., by counsel, requests the court to dismiss the action herein and to award it the costs for the defense of this matter.

ROSE'S STORES INC., a/k/a VARIETY
WHOLESALEERS, INC., a/k/a VARIETY
STORES, INC.

By: _____

Counsel

Lawrence A. "Lex" Dunn (VSB #30324)
McCandlish Holton, P.C.
1111 East Main Street, Suite 2100
Richmond, VA 23219
(804) 344- 6307 Telephone
(804) 819-1175 Facsimile
LDunn@lawmh.com
*Counsel for Rose's Stores, Inc., a/k/a
Variety Wholesalers, Inc., a/k/a Variety
Stores, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of July, 2022 the foregoing document was emailed
and mailed via First Class postage prepaid to the following:

David L. Scyphers, Esq.
SCYPHERS & AUSTIN, P.C.
Attorneys at Law
189 Valley Street, N E
Abingdon, VA 24210
Telephone: (276) 628-7167
Facsimile: (276) 628-8736

A handwritten signature in black ink, appearing to read "David L. Scyphers", is written over a horizontal line.